REMARKS:

Claims 3-4, 7-8, 11-12 and 17-19 are pending in the present Application, standing rejected under 35 U.S.C. § 103 as allegedly obvious. Claims 3-4 and 17 are amended herein. The Applicant respectfully requests continued examination and reconsideration of the Application in light of the amendments and the following remarks.

I. EXPLANATION OF CLAIM AMENDMENTS

Applicant has entered amendments to claims 3-4 and 17; the reason for each amendment is explained below.

A. Claim 3

Claim 3 has been amended to cancel the word "associated" and adds the words "paid in connection" to the claim. This change is made not for patentability, but to clarify that the percentage of principal claimed in the present application refers to principal paid, rather than outstanding principal.

Claim 3 has also been amended to add the descriptive phrase "to be paid to the service provider" after "a financial asset services value". This change is not made for patentability, but to clarify that the financial asset services value is the compensation due to the service provider pursuant to a contract or agreement.

B. Claim 4

Claim 4 has been similarly amended to cancel the word "associated" and add the words "paid in connection" to the claim. Claim 4 has also been amended to add the descriptive phrase "to be paid to the service provider" after "a financial asset services value". The reasons for these changes are not made for patentability and can be found in the previous section regarding similar changes to claim 3.

C. Claim 17

Claim 17 has been similarly amended to cancel the word "associated" and add the words "paid in connection" to the claim. The reasons for the change are not made for patentability and can be found in the previous sections regarding similar changes to claims 3 and 4.

II. THE CLAIMS ARE PATENTABLE OVER THE PRIOR ART.

In the present Office Action, claims 3-4, 7-8, 11-12 and 17-19 are rejected under 35 U.S.C. § 103(a) as allegedly obvious over U.S. Patent No. 6,249,775 ("Freeman") in view of Han, Jun, "To Securitize or not to Securitize? The Future of Commercial Real Estate Debt Markets", Real Estate Finance, New York, Summer 1996, Vol. 13, Iss. 2, p 71 ("Han"). Applicant respectfully traverses these rejections and asserts that the claims are in condition for allowance.

A. Freeman Simply Describes the Problem.

The present invention describes a new way to compensate a financial asset services provider. In the past, the financial asset services provider was compensated solely as a function of the interest due on the loan. Freeman states "it is traditional in the banking industry to attribute to each loan a basic cost of servicing which is included in the interest fees charged to the customer." Freeman, col. 1 l. 45-50. As a result, if a loan is prepaid prematurely there is no more interest due on the loan. Thus the service provider has no opportunity to collect fees to recover its front-loaded costs in servicing the loan.. This is the precisely the problem that Freeman describes. Freeman states that "it is self-evident that the profits from...the loan servicing line of business is heavily influenced by the performance of various loan groups vis-à-vis the default rate of these loans over the life of the loans, foreclosures, collection efforts, **loan prepayment** and the like." Freeman, col. 5 l. 60-65 (emphasis added).

However, the present invention discloses and claims a novel way **to compensate** the financial asset service provider. According to the present invention, the financial asset service provider is compensated in an amount calculated by taking a portion of both the interest **and the principal paid**. Thus, (1) an earlier than anticipated prepayment of the serviced loans does not disproportionately penalize the servicer and (2) a later than anticipated payment of the loans does not disproportionately benefit the servicer. Freeman does not disclose calculating the financial asset services value (the compensation due pursuant to the contract itself) as a portion of both principal and interest paid on the loan.

Claim 3 recites "determining a financial asset services value to be paid to the service provider as a percentage of the principal and interest paid in connection with the

financial account." The specification of the present patent application teaches that "[t]he financial asset services provider 30 may be **compensated** by the creditor 10 for services provided under a financial asset services agreement **in an amount equal to the financial asset services value** 130." (emphasis added). Thus, the financial asset services value is the compensation due to the service provider pursuant to a contract or agreement. Claims 7 and 11 depend upon claim 3, therefore incorporate this recitation.

Similarly, claim 4 recites "determining a financial asset services value to be paid to the service provider as a percentage of the principal and interest paid in connection with the financial account." Claims 8 and 12 depend upon claim 4, therefore incorporate this recitation.

Likewise, claim 17 recites "fees collected in servicing a financial asset related to at least one loan are based upon a percentage of both the principal and interest paid in connection with the financial asset". Claims 18 and 19 depend upon claim 17 and therefore incorporate this element.

For at least these reasons, the present invention would not have been obvious at the time of invention in view of Freeman, and the Applicant submits that claims 3-4, 7-8 11-12 and 17-19 are patentable over the teachings of Freeman. The present Office Action indicates that the Examiner agrees: "Freeman does not explicitly disclose determining a financial asset services value as a percentage of the principal and interest paid in connection with the financial account." *See* October 31, 2007 Office Action at 3.

B. Han Simply Describes the Problem.

The Examiner asserts in the present Office Action that "Han discloses determining a financial asset services value as a percentage of the principal and interest associated with the financial account (i.e., ongoing fees, see page 4, third paragraph)." *See* October 31, 2007 Office Action at 3. Thus, the Examiner concludes "it would have been obvious to one of ordinary skill in the art to incorporate the master servicing teaching into Freeman in order to approximately value financial asset services." *Id.*

However, Han does not disclose compensating the service provider with a portion of the principal as well as the interest on a loan. Instead, Han simply describes the problem rather than the solution provided by the present invention. The following quotation from Han is cited by the Examiner as disclosing compensating the service

provider with a portion of the principal: "After a CMBS transaction is completed, it needs to be serviced by a master servicer with an annual fee of 3 to 17 basis points of the outstanding principal, and by a special servicer with one basis point of standby fee." Han at 4. That is, one determines the principal and multiplies it by 3 to 17 basis points to determine the servicing fee. The fee is calculated the same way that the interest payment is calculated. This statement in Han actually teaches one of ordinary skill in the art that the servicer's fee is charged to the amount available to pay interest to the owner of the loan. To one of ordinary skill in the art, a basis point is a measure of the change in an interest rate. *See* http://en.wikipedia.org/wiki/Basis_point ("A **basis point** (often denoted as bp, bps or ‰; rarely, permyriad) is a unit that is equal to 1/100th of 1%. It is commonly used to denote the change in a financial instrument, or the difference (spread) between two interest rates; although it may be used in any case where percentages are used, it is used for convenience when quantities in percentage points are small.") (emphasis added); http://www.investopedia.com/terms/b/basispoint.asp ("A unit that is equal to 1/100th of 1%, and is used to denote the change in a financial instrument. The basis point is commonly used for calculating changes in interest rates, equity indexes and the yield of a fixed-income security.") (emphasis added). Thus, Han teaches that the servicer is to be compensated with a portion of the interest component of the loan. Han's reference to "outstanding principal" simply reflects the reality that the interest charged on a loan is calculated as a percentage of the principal. Han does not disclose compensating the service provider **with a portion of the principal paid on the loan**, as well as a portion of the interest.

For at least these reasons, the present invention would not have been obvious at the time of invention in view of Han, and the Applicant submits that claims 3-4, 7-8 11-12 and 17-19 are patentable over the teachings of Han. Moreover, because neither Freeman nor Han discloses compensating the service fee with a percentage of the principal paid, the combination of Freeman and Han could not possibly teach one of ordinary skill in the art to do so.

C. Facts Taken By Official Notice Not Properly Based Upon Common Knowledge

Further, on pages 3 and 4 of the present Office Action, the Examiner asserts that "official notice is taken that determining a financial asset services value as a percentage of the principal and interest associated with the financial account is an old and well-known master servicing scheme." *See* October 31, 2007 Office Action at 3, 4. Section 2144.03(a) of the MPEP states that "It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." While it is possible that master servicing schemes that involve a percentage of the principal and interest associated with the financial account may be known, such a scheme has never been used in the context of a loan agreement, or more specifically, an agreement regarding a mortgage loan or credit card account. Therefore, the Applicant respectfully traverses the Examiner's finding of official notice under MPEP § 2144.03(c) and requests the Examiner to produce authority for his statement. "'[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings' to satisfy the substantial evidence test." MPEP § 2144.03(c) (quoting *In re Zurko*, 258 F.3d 1379, 1386, 59 U.S.P.Q.2d 1693, 1697 (Fed. Cir. 2001)). Without evidence that master servicing schemes have been applied to loan servicing agreements, or more specifically, mortgage loans or credit card accounts, then the references cited fail to teach or suggest all of the claimed limitations.

CONCLUSION:

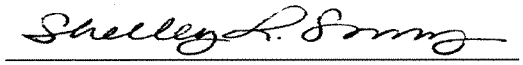
For at least the reasons set forth above, the Applicant respectfully submits that claims 3-4, 7-8, 11-12, and 17-19 are in condition for allowance. The Applicant therefore requests that the present application be allowed and passed to issue.

Should the Examiner believe anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited (and encouraged) to contact the Applicant's undersigned representative.

Respectfully submitted,

HUNTON & WILLIAMS LLP

January 31, 2008

By: 

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